IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 26 OF 2004

Shri Suresh Bandekar,
major of age,
r/o House No. 206(2),
Salgaonkar Wada, Advalpal,
Bicholim, Goa. ... Appellant.

VERSUS

1. Shri Ashok G. Bandekar.

2. Shri Gangaram G. Bandekar.

3. Shri Ulhas G. Bandekar,
all major of age,
residents of Bhaili Peth,
Bicholim, Goa.

4. State of Goa,
Through Public Prosecutor. ... Respondents.

Mr. J. Godinho, and Mr. Samir Talegonkar, Advocates for the Appellant.

Mr. S.D. Lotlikar, Senior Advocate with Ms. S. Naik, Advocate for the Respondents No.1 to 3.

Mr. S.N. Sardessai, Public Prosecutor for the State/Respondent No.4.

CORAM: N.A. BRITTO, J.

DATE: 24TH JUNE, 2004.

ORAL ORDER:

The complainant in Criminal Case No.84/P/97/B seeks leave to appeal. Upon the complaint filed by him under Sections 143, 352, 379, 380, 427, 448 and 504 of I.P.C. the learned J.M.F.C. was pleased to order process to be issued against the accused under Sections 427, 506, 448 and 341 of I.P.C. In the trial which followed the complainant examined himself and

his caretaker P.W.2 Ramchandra Thanekar. The learned J.M.F.C. upon considering the evidence of the complainant and the said caretaker Ramchandra Thanekar, convicted the accused Nos.1, 2 and 4 under different sections, but upon appeal filed by them, before the learned Sessions Judge, Panaji, they too were acquitted by the learned Sessions Judge by judgment/order dated 20.9.2003.

2. As rightly noted by the learned Sessions Judge, the dispute between the complainant and the said accused namely accused nos.1, 2 and 4 is regarding a house of which they are the co-owners and the complainant and the said accused being brothers. The evidence led in support of the complaint consisted only of the said caretaker namely P.W.2 Ramchandra Thanekar. The learned Sessions Judge in his caution and prudence has chosen not to place implicit reliance on the evidence of P.W.2 Ramchandra, more so, because no corroborative evidence was produced though otherwise was claimed to have been available. Even complaint lodged by the said P.W.2 Ramchandra with the police which was admittedly claimed to be lodged, was not produced. In my opinion, the learned Sessions Judge rightly doubted the veracity of the version given by the said witness on whose evidence the case of the complainant was solely based.

3. Shri Godinho, learned Advocate of the complainant has placed reliance on the cases of **Hari Ram and others v. State of Rajasthan** (A.I.R. 2000 S.C. 1647) **and Chaudhari Ramjibhai Narasangbhai v. State of Gujarat and others** (2004) 1 S.C.C. 184. I have perused the said two decisions, which in my opinion, have no connection to the case at hand.

4. In my opinion the learned Sessions Judge having doubted the veracity of the version given by the said P.W.2 Ramchandra has acquitted the accused. This Court is not entitled to substitute its view with that of the learned Sessions Judge. In this connection, I may refer to the observations of the Hon'ble Supreme Court in the case of **The State of U.P. v. Samman Dass** (A.I.R. 1972 S.C. 677) in which it is stated that there is a presumption of innocence in favour of the accused which has to be kept in mind, especially when the accused has been acquitted by the court below; and secondly if two views of the matter are possible, a view favourable to the accused should be taken.

5. In view of the above, I find that this is not a fit case to grant leave to appeal to the complainant. Hence application is hereby rejected.

N.A. BRITTO, J.

sl.